

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS D. NELSON,
OLIVER A. OSSANA, and
DOUGLAS G. ANDERSON¹

Appeal 2007-3839
Application 10/033,634
Technology Center 3600

Decided: 18 October 2007

Before JAMESON LEE, ADRIENE LEPIANE HANLON, and SALLY C. MEDLEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

1 DECISION ON APPEAL

2 This is a decision on appeal by an Applicant under 35 U.S.C. § 134(a)
3 from a rejection of claims 1-5, 8-18, 20, 23-27, 29-33, 36-46, 48, 50-58, 61-
4 71, under 35 U.S.C. § 103 as unpatentable over U.S. Patent 4,949,501. We
5 have jurisdiction under 35 U.S.C. § 6(b).

¹ The real party in interest is Ecolab, Inc.

1 Oral argument was scheduled for October 17, 2007, at 10:00 AM.
2 Counsel for the Applicants, J. Derek Vandenburg, appeared and stated that
3 the Applicant, in light of the recent Supreme Court decision in *KSR*
4 *International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385,
5 1397 (2007), had filed an abandonment of the underlying application, in
6 favor of a continuing application in which to address patentability issues
7 raised by *KSR International Co.* A review of the electronic records of the
8 USPTO reveals that the Applicant filed an Express Abandonment on
9 October 16, 2007. Jurisdiction over the appeal, however, still lies with the
10 Board. 37 C.F.R. § 41.35(a).

11 We take counsel's representation as not contesting the Examiner's
12 rejections in this appeal. Accordingly, the Examiner's rejection is **affirmed**,
13 without opinion.

14 No time period for taking any subsequent action in connection with
15 this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cc (via U.S. Mail):

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